TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 248 27

AMERICAN SCHOOL OF MAGNETIC HEALING AND J. H. KELLY, APPELLANTS

vs.

J. M. McANNULTY

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED AUGUST 28, 1906.

(17,887.)

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J. M. McANNULTY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 1, 1901.

COPY BOUND CLOSE IN CENTER

a UNITED STATES OF AMERICA, *sct:*

To J. M. McAnnulty, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein American School of Magnetic Healing and J. H. Kelly are complainants and J. M. McAnnulty *are* respondents, to show cause, if any there be, why the judgment rendered against the said complainant in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of August, in the year of our Lord one thousand nine hundred.

WILLIAM C. HOOK, *Judge.*

[Endorsed:] United States circuit court, western district of Missouri, western division. American School of Magnetic Healing & J. H. Kelly *vs.* J. M. McAnnulty. Citation. Filed Aug. 3, 1900. Adelaide Utter, clerk.

b UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

I hereby acknowledge due service of the within citation this 3rd day of August, A. D. 1900.

WM. WARNER,
Attorney for Respondent.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore, to wit, on the 30th day of May, A. D. 1900, there was filed in the office of the clerk of the circuit court of the United States for the western division of the western district of Missouri a bill of complaint, wherein American School of Magnetic Healing, S. A. Weltmer, and J. H. Kelly are complainants and J. M. McAnnulty is defendant.

Thereupon a writ of subpœna was duly issued in said cause; which writ and the marshal's return thereon is in words and figures as follows:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

The President of the United States of America to J. M. McAnnulty, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the western division of the western district of Missouri, on the first

Monday of July next, at the city of Kansas City, then and there to answer the bill of complaint of American School of Magnetic Healing, S. A. Weltmer, & J. H. Kelly, citizens of the State of Missouri, filed against you on the 30 day of May, A. D. 1900. Hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 30 day of May, 1900.

2 Issued at office, in the city of Kansas City, under the seal of said court, the day and year last aforesaid.

ADELAIDE UTTER,
[SEAL.] *Clerk of said Circuit Court.*

MEM.—The defendant to enter his appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

ADELAIDE UTTER, *Clerk.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

I do hereby certify that I executed this writ by delivering a true copy of the same, together with a duly certified copy of the bill of complaint in the cause, to J. M. McAnnulty. All done at Nevada, Mo., on this 31st day of May, 1900, and in the western division of the western district thereof.

E. R. DURHAM,
U. S. Marshal, Western District of Missouri.
By J. E. MORRISON, *Deputy.*

And on said 30th day of May, A. D. 1900, there was filed a restraining order in said cause in words and figures as follows:

3 In the United States Circuit Court, Western Division, Western Judicial District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING, S. A. WELTMER, and J. H. Kelly, Complainants,
vs.
J. M. McANNULTY, Defendant.

On the presentation to me, the undersigned, of the bill of complaint in the above-entitled cause and upon due consideration thereof it is—

Ordered that J. M. McAnnulty, the defendant above named, show cause before me, at my chambers in the post-office building, in the city of St Louis, Missouri, on June 9th, 1900, at ten o'clock a. m., or as soon thereafter as counsel can be heard, why the temporary injunction prayed for in said bill of complaint should not be granted, and that in the meantime and until action has been taken upon said application that the said J. M. McAnnulty, who is said to be postmaster at the town of Nevada, Missouri, his servants, agents, and employés, be, and they are hereby, enjoined and restrained from re-

turning such registered letters and mail as has been heretofore or may hereafter be received at the post-office at Nevada, Missouri, addressed either to the "American School of Magnetic Healing" or to "Professor S. A. Weltmer" or to S. A. Weltmer, as president or officer of the American School of Magnetic Healing, or to S. A. Weltmer individually, or to J. H. Kelly, as manager or as treasurer or as secretary of the American School of Magnetic Healing, or to J. H. Kelly personally, or to Professor J. H. Kelly, and that they and each of them do desist from doing the acts aforesaid
4 until the time aforesaid, and that they be further enjoined and restrained from stamping or writing the word "fraudulent" upon any of the mail matter aforesaid, notwithstanding any orders that said defendant, J. M. McAnnulty, may have heretofore received from any source to do or perform such acts.

It is further ordered that a copy of this order, together with a copy of the bill of complaint upon which the same was obtained, be forthwith served by the United States marshal of the western district of Missouri upon said J. M. McAnnulty, the above-named respondent.

Done at St. Paul, Minnesota, within the eighth judicial circuit, this 28th day of May, A. D. 1900.

(Signed) AMOS M. THAYER,
U. S. Circuit Judge, 8th Circuit.

Thereupon a duly certified copy of said order was placed in the hands of the marshal, and afterwards, on the 1st day of June, 1900, the marshal made return as follows:

Executed the within order of court by delivering a true copy of the same to J. M. McAnnulty. All done at Nevada, Mo., on this 31st day of May, 1900, and in the western division of the western district thereof.

E. R. DURHAM,
U. S. Marshal,
By J. E. MORRISON, *Deputy.*

5 And afterwards, to wit, on the 7th day of June, A. D. 1900, an answer was filed in said cause.

Afterwards, to wit, on the 12th day of June, 1900, comes the complainant S. A. Weltmer and files request to withdraw as a party to this cause. Said request is in words and figures as follows:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING ET AL.
vs.
J. M. MCANNULTY.

Comes now S. A. Weltmer and voluntarily withdraws as a plaintiff herein and requests the cause to — dismissed as to him, both in

his individual capacity and in his capacity as an officer, president and representative in any capacity of said American School of Magnetic Healing, and withdraws any request for injunction or relief in the capacities aforesaid.

Dated June 9th, 1900.

HARKLESS, O'GRADY & CRYSLER.
F. N. JUDSON.
OVERMYER & MULVANE.
HOSS & HOSS.

Thereupon the following order was filed:

6 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING, S. A. WELTMER, and J. H. Kelly, Complainants,
vs.
J. M. MCANNULTY, Defendant.

S. A. Weltmer, one of the complainants in the above-entitled cause, having filed a written request that he may be permitted to withdraw as a complainant in said cause and that the action be discontinued so far as he is concerned, both in his individual capacity and as an officer of the American School of Magnetic Healing, it is—

Ordered that said request be, and the same is hereby, granted, and that said S. A. Weltmer's name be expunged as a party to said cause.

(Signed) AMOS M. THAYER,
U. S. Circuit Judge.

Afterwards, to wit, on the 14th day of June, 1900, an order was filed in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING, S. A. WELTMER, and J. H. Kelly, Complainants,
vs.
J. M. MCANNULTY, Defendant.

7 Ordered that the rule to show cause why a temporary injunction, as prayed for in the bill of complaint herein filed, should not be granted, which order to show cause was filed on May 30, 1900, be, and the same is hereby, discharged, and that the restraining order contained in said rule to show cause be, and the same is hereby, revoked.

(Signed) AMOS M. THAYER,
U. S. Circuit Judge.

Afterwards, to wit, on the 11th day of July, A. D. 1900, an amended bill of complaint was filed in words and figures as follows, to wit:

8 UNITED STATES OF AMERICA:

In the United States Circuit Court, Western Division, Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING and J. H. KELLY, Orators,
vs.
J. M. MCANNULTY.

To the honorable the judges of the circuit court of the eighth judicial circuit of the United States of America:

Come now your orators, The American School of Magnetic Healing and J. H. Kelly, and file this amended bill and, complaining to your honors, state:

That the American School of Magnetic Healing is a business corporation, incorporated under the laws of the State of Missouri, and that it and J. H. Kelly are residents and citizens of the State of Missouri and of and in the western division of the western district of said State.

That the respondent herein, J. M. McAnnulty, now is and at the times and dates hereinbefore mentioned was and for a long time prior thereto has been the postmaster in charge of the United States post-office at the city of Nevada, county of Vernon, State of Missouri, and is a resident and citizen of said State and of the said western division of the western district of the State of Missouri.

That said respondent at all times and dates hereinafter mentioned was and is the postmaster, agent, and officer of the United
9 States, having in charge and under his control as such postmaster and officer the exclusive management of the post-office at said city of Nevada and the exclusive charge and control of the receipt and distribution of mail received at said city of Nevada through the United States mails, either for distribution to the citizens adjacent to said post-office or received from citizens thereof, to be transmitted to the various parts of the United States from said post-office.

And your orators further state that the American School of Magnetic Healing is located and has its chief office and place of business at said city of Nevada, a city of a population of about 12,000 people.

That said J. H. Kelly now is and at all dates and times hereinafter mentioned was secretary, treasurer, and general manager of said corporation.

That about the month of February, 1897, J. H. Kelly located at said city of Nevada and engaged in the business of healing diseases and ailments of the human family, and the business of teaching the science of and instructing in the science of healing of human ills;

that immediately after locating at the place aforesaid he built up a large and lucrative business, and continued to build up such business and enlarge his business capacity until the month of April, 1898, when he incorporated said business, under the laws of the State of Missouri aforesaid, under the name of the American School of Magnetic Healing; that among the stockholders of said company was and now is J. H. Kelly.

That long prior to the happening of the grievances hereinafter complained of, in the furtherance of undertaking and building up his business and its interests, — erected large and extensive buildings owned and controlled by it at the said city of Nevada for the purpose of accom-odating, treating, and facilitating the treating of all kinds of diseases, and expended in and about the buildings and equipments thereof the sum of $50,000, and in and about their business have engaged in and caused to be placed throughout the United States large and extensive advertising matter, and have spent and invested in and about advertising and bringing before the public of the United States the virtues, facilities, and advantages and character thereof about $300,000.00, and have, in said establishment at said city and under their control, a large corps of assistants and employees, to wit, to the number of ninety.

That in and about their business they carried on and conducted, not only the treating of people afflicted with ills at their establishment at said city, but also engaged in the business of teaching and educating others in the practical science of healing, and that a large amount of their business consists of treatment by letter and advice to people throughout the United States and foreign countries, and in the treatment under said circumstances have built up a large and extensive business in the way of receipts of such treatment received through the United States mail, by letter, registered package, and otherwise, in the nature of checks, drafts, and United States moneys; that said business has grown to such an extent that immediately and for a long time prior to the grievances hereinafter complained of the receipts through the United States mails in the manner aforesaid for the treatment of persons throughout the United States and foreign countries *has* reached and averaged about from one thousand dollars to sixteen hundred dollars per day.

And your orators state that said business is a legal and legitimate business, conducted according to business and legal methods, and is founded largely and almost exclusively on the physical and practical proposition that the mind of the human race is largely responsible for its ills, and is a perceptible factor in the treating, curing, benefiting, and remedying thereof.

And that the human race does possess the innate power, through proper exercise of the faculty of the brain and mind, to largely control and remedy the ills that humanity is heir to, and discards and eliminates from its treatment what is commonly known as divine healing and Christian science, and is confined to practical scientific treatment emenating from the source aforesaid.

That for a long time previous and prior to the grievances hereinafter mentioned said corporation has been sending out a large

amount of advertising matter through the United States post-office at said city of Nevada, and that all of its receipts, by checks, drafts, or money order- aforesaid, *has* been received by and delivered to them through the United States post-office at the city of Nevada, of which the respondent herein has exclusive charge as postmaster aforesaid, and had, during the time aforesaid, been receiving a large number of letters addressed to said institution and to its office, regarding its treatment and manner of treatment, and business letters pertaining to and inquiring into the manner of treatment.

That all such mail, letters, — communications are generally addressed and directed to the American School of Magnetic Healing at said city, and that in many cases said letters are and may be addressed to said J. H. Kelly, secretary or treasurer or manager, or to J. H. Kelly individually, or to Prof. J. H. Kelly, or to J. H. Kelly, or Porf. J. H. Kelly, secretary, treasurer, or manager of the American School of Magnetic Healing.

That said Kelly is also receiving and for a long time past has been receiving letters addressed to him individually upon social matters from friends and acquaintances and concerning business not pertaining or connected with the business hereinafter stated.

12 That prior to the grievances hereinafter mentioned said institute was receiving in the way of letters addressed to it or to its officers in the manner aforesaid an average of about the sum of 3,000 letters per day, and ever since the happening of the grievances hereinafter mentioned there *has* been accumulating in said post-office letters belonging to your orator, addressed in the manner before stated, probably to the total number of 25,000 letters.

That all of said letters, as your orators are informed and believe, are duly stamped and ready for delivery to them but for the action of the Postmaster and Postal Department hereinafter mentioned.

And your orators now further state and inform your honors that heretofore, to wit, for some time prior to the first of May last, various parties and individuals, prompted by assumed competitive interference with their business, did complain to the United States Post-office Department, at Washington, that said institution was not engaged in legitimate business, and attempted to procure the department to take steps to interfere and prohibit the delivery of mail to said institution or any of its officers, so that on the 3rd day of May, 1900, the respondent in this case, under instructions from the Post-office Department, at Washington, which instructions were afterwards reduced to writing, under date of May 15th, 1900, refused on said day and ever since to allow and permit your orators to receive or have any of the letters so received at the post-office and addressed to them at Nevada, Missouri, or allow them to come into possession under any circumstances, or to acquire possession of, and ever since said date has and still does utterly refuse, although he has been requested to deliver or permit your orators to receive from said post-

13 office the large number of letters so addressed to them and remaining in the post-office aforesaid, or to permit them to hereafter receive or become possessed of any of such mail or

letters addressed to them in the post-office aforesaid, and has refused to and informed these orators that he will not cash any of the United States post-office money orders payable to them, or any of them, that *has* or may come through said office, and that since said date there *has* accumulated and now *is* on hand in said office, under the control of the respondent, letters to the number of about 25,000, properly stamped, and which your orators are entitled to receive and have.

And your orators further state that said letters contain, according to their best information and belief, checks, drafts, money, or money orders of the United States, payable to them or their order, for their use and benefit, to the extent of about $10,000 in value.

That said checks, drafts, money, or money orders contained in said letters addressed to your orators, as aforesaid, and which the respondent has refused to turn over, are from various customers and clients throughout the United States and foreign countries, who have all been treated, and for whom they performed services under contracts with said parties, and that said sums are so sent in the respective letters in payment for services performed and rendered to them respectively, and that all of said senders of remittances aforesaid are willing and at all times have been willing that said letters containing the remittances aforesaid should be turned over to your orators, and they making no objection or complaint thereto; and your orators further state that they have been informed by the said respondent that on Monday, the 28th day of May, he will stamp upon each and every one of said letters addressed to your orators under any of the designations hereto-
14 fore mentioned the word "fraudulent" across the face of each and every one of said letters, without opening them and without knowing what they contain or the contents thereof or what they may pertain to or the nature or character of the communications or anything therein, and on said date return the same to each and every sender of the letters respectively in all cases where from the outside of the letter or envelope he is able to determine from whom the same was received or sent, and as to all other of said letters and communications addressed to your orators under any of the designations hereinbefore mentioned and in all cases where he shall be unable to determine from the outside of the envelope from whom the same was sent or from whom the same was received he will stamp with the word "fraudulent" and send to the dead-letter office of the United States Post-office Department, and that said respondent will carry out this threat and will so return all of said mail matter unless prohibited from so doing by writ of injunction from your honors, and, as your orators here state and verily believe, will, and he threatens and informs your orators that he will, unless restrained therefrom, refuse to deliver any further mail or letters aforesaid to your orators or any of them that may be hereafter received at said post-office addressed to and directed in any of the modes aforesaid.

And your orators state that if said respondent is permitted to do the things aforesaid and to return said letters and refuse in the future to deliver or allow your orators to receive any letters or mail

matter of the character aforesaid it will work irreparable injury, loss, and damage to your orators, and result in eventually embarrassing, crippling, breaking up, and destroying their legitimate business aforesaid, and that they have no legal or adequate remedy by which they can in any way prevent the committing of the
15 acts and grievances herein complained of otherwise then by writ of injunction.

Your orators further state and inform your honors that they are informed and believe that the said respondent refuses to permit the delivery of said mail because he claims and insists, under the advice of the Post-office Department of the United States, that your orators have and are in the conduct of their business and receiving of the mail thereof from the United States post-office, as aforesaid, violating certain portions of the statutes of the United States known and designated as sections numbers 3929 and 4041, passed September 19th, 1890, and section 4 of an act approved March 2nd, 1895, which said statute reads as follows:

"Sec. 3929 of the Statutes of 1890, chapter 908, section 2. The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations or promises, instruct postmaster at any post-office at which registered letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank corporation or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed with the word "fraudulent" plainly written or stamped upon the outside thereof; and all such letters so returned to such postmaster shall be by
16 them returned to the writers thereof, under such regulations as the Postmaster General may prescribe. But nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. The public advertisement by such person or company so conducting such lottery, gift enterprise, scheme or device that remittance for the same may be made by registered letters to any other person, firm, bank, corporation or association named therein shall be held to be *prima facie* evidence of the existence of such agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself."

Sec. 4041 of the Statutes of 1890, chapter 908, section 2. The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance or drawing of any kind, or that any person or company is conducting any other scheme for obtaining

money or property of any kind through the mails by means of false or fraudulent pretenses, representations or promises, forbids the payment by any postmaster to the said person or company of any postal money orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders, but this shall not authorize any person to open any letter not addressed to himself. The public advertisement by such person or company so conducting any such lottery, gift enterprise, scheme or device, that the remittances for the same may be made by means of postal
17 money orders to any other person, firm, bank, corporation or association named therein, shall be held to br *prima facie* evidence of the existence of said agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of any such agency in any other legal way."

"SECTION 4. That the powers conferred on the Postmaster General by the Statutes of 1890, chapter 908, section 2, are hereby extended and made applicable to all letters or other matter sent by mail. Approved March 2nd, 1895."

Your orators further state that on or about the 3rd day of May, 1900, the Postmaster General of the United States sent the following telegram to the respondent, to wit: "Postmaster, Nevada, Mo.: Withhold from delivery pending consideration for the issuance of a fraud order all mail addressed to S. A. Weltmer, J. H. Kelly, American School of Magnetic Healing, and S. A. Weltmer's infirmary, Nevada, Mo. Mail today will carry fuller explanation."

That upon the receipt of said telegram the respondent herein immediately obeyed the same and withheld from delivery all mail of every kind to your orators of the character and nature herein stated and failed and refused to deliver any mail to them until otherwise ordered by the Postmaster General; that afterward and before the 15th day of May, 1900, and in pursuance to notice from the Postmaster General, your orators went before the Postmaster General, at Washington city, and presented their reasons why no fraud order should be issued or continued against them, and the United States post-office inspectors in person and others also presented their reasons to the Postmaster General why a fraud order should be issued, and the Postmaster General heard such evidence as in his judgement was contemplated by the sections of the statutes heretofore mentioned; and thereafter, on the 15th day
18 of May, 1900, the Postmaster General of the United States issued an order directed to the respondent herein as postmaster at Nevada, Missouri; which order is in words and figures as follows, to wit:

"*Order No.* 475.

POST-OFFICE DEPARTMENT,
WASHINGTON, D. C., *May* 15, 1900.

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that the American School of Magnetic Healing, S. A. Weltmer, president; J. H. Kelly, secretary, and J. A. Kelly, at Nevada, Missouri, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of the act of Congress entitled 'An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes, approved September 19, 1900:'

Now, therefore, by authority vested in him by said act and by the act of Congress entitled 'An act for the suppression of lottery traffic through international and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States, approved March 2, 1895,' the Postmaster General hereby forbids you to pay any postal money order drawn to the order of said concern and persons, and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of a duplicate money order applied for and obtained under the regulations of the department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at
19 your office directed to the said concern and persons, to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the word 'fraudulent' plainly written or stamped upon the outside of such letters or matter: Provided, however, that where there is nothing to indicate who are the senders of letters not registered or other matter you are directed in that case to send such letters and matter to the dead-letter office, with the word 'fraudulent' plainly written or stamped thereon, to be disposed of as other dead matter, under the laws and regulations applicable thereto.

CH. EMORY SMITH,
Postmaster General.

To the postmaster, Nevada, Missouri."

That, acting upon said order and under the provisions of the statutes heretofore quoted, the respondent refused to permit the delivery of the mail aforesaid, and that respondent assigns as his only reason for doing so that the same would be in violation of the said order of the Postmaster General, founded upon the provisions of the Revised Statutes of the United States, heretofore set forth, and but for said order of the Postmaster General, founded upon the said statutes, the said respondent would not refuse the delivery of the mail aforesaid, and that said respondent claims that said statutory provisions of the United States, heretofore set forth, are legal and constitutional, and that the order founded thereon by the Postmaster

General is therefore properly issued, and that he is acting according to law in obeying and following said statutory provisions and the order of the Postmaster General founded thereon.

And that said claim of the respondent is the only claim or reason which he assigns or gives for the refusal to permit the delivery of said mail aforesaid.

20 And your orators inform your honors that said statute has no application whatever to the conducting or carrying on of their business; that their business is a legitimate one, and that no fraud, deceit, deception, or misrepresentation of any kind ever has been practised by them, and that their customers or clients do not claim or assert that your orators have in any manner practiced any fraud, deceit, or misrepresentation at any time in procuring the business from them or in treating or in curing their ills or diseases, and that they have not at any time violated or been parties directly or indirectly to the violation or infringement of the said law, and that the respondent is attempting, under advice and instructions aforesaid, to arbitrarily and by *ex parte* means *to* decide for himself and be the sole judge to determine that your orators have — or are violating said law and to take it upon himself to so assume and adjudge, when in truth or in fact he does not know or cannot know of the contents or nature of said letters or of their import or character, and undertake- arbitrarily to act as judge in his own case and to invade and infringe upon the rights of your orators without any adjudication or decision or hearing by any competent tribunal, court, or authority as to the property, interest, and right to determine said question, and has without authority deprived and seeks to deprive your orators of their property and property rights without due process of law.

And your orators further state and allege that the said provision of the law, to wit, the section of the statute of the United States heretofore mentioned, is in violation of the 4th, 5th, and 14th amendments of the Constitution of the United States and other provisions of the Constitution of the United States, in that the same undertakes to deprive persons and property and would deprive your

21 orators, if enforced, of their property and property rights without due process of law; and in fact it attempts and if enforced will place in power of the postmasters of the United States and of the Post-office Department of the United States the sole and exclusive right to pass upon the rights of your orators as between themselves and other parties with whom they deal and transact business through the mails without a hearing, and that said section and provision of the statute is void for the reason that it provided for no tribunal, court, or authority to hear and determine any violation of the statute or claimed violation of the statute, but placed the same absolutely in the power and control of the postmasters and the Post-office Department, and attempts to vest an arbitrary discretion in the postmasters and Post-office Department to determine for themselves, as they see fit, whether right or wrong, the question as to who shall and who shall not have and receive mail from the United States Post-office Department and who shall and who shall not use

the United States mails, and vests in them the power, if enforced, to interdict and absolutely prohibit the carrying on of all commercial and business transactions of the country done through the mailing system if they see fit so to do, and makes the postmasters and Post-office Department the sole judges in their own case.

Wherefore may it please your honors, and we, your orators, now pray, that you grant unto them your writ of injunction directed to the respondent herein, J. M. McAnnulty, postmaster, as aforesaid, at the city of Nevada, Vernon county, Missouri, in the western division of the western district of said State, enjoining and prohibiting him from returning, attempting to return, or taking any steps to return or aid in the return of any of the letters and mail matter of any kind now or that may hereafter be

22 in the post-office under his control, at the city of Nevada, Missouri, belonging to or addressed to the American School of Magnetic Healing, or to J. H. Kelly, as manager, or as treasurer, or as secretary of said corporation, or as manager, secretary, or treasurer, or to J. H. Kelly personally, or to Prof. J. H. Kelly, and that he at once desist from carrying out any such purpose or contemplated purpose, and that he be enjoined from interfering in any way with the future delivery of any such mail, and that he may be commanded to at once deliver and cause to be delivered upon request of your orators or any or either of them any and all letters or mail now in the post-office and under the control of the respondent at said city of Nevada, or that he may hereafter come into possession of, or that may come into his office or under his control as such postmaster, belonging to your orators or addressed to any of them under any of the designations or titles above stated, and that he continue to so deliver said mail until otherwise ordered by this court:

That a day may be set when and where the respondent may appear to show cause why this injunction shall not be made perpetual, and that upon the final hearing of this cause a perpetual injunction be issued to and against said respondent, his agents, officers, employees, or servants, enjoining him and them from doing, and enforcing upon him and them the doing, of all the matters herein set forth and complained of, and for all other and proper relief as to your honors may seem meet and proper, to the end that complete justice may be done to your orators herein.

HARKLESS, O'GRADY & CRYSLER,
Solicitors for Orators.

STATE OF MISSOURI, }
County of Vernon, } ss:

23 J. H. Kelly, being duly sworn, upon oath states that he is manager of the American School of Magnetic Healing and one of the complainants herein, and that the matters and things above stated are true as he verily believes.

J. H. KELLY.

Subscribed and sworn to before me on this 10th day of July, 1900.

JAY H. RINEHART,
[SEAL.] *Notary Public within and for Vernon Co., Kas.*

Commissioned and qualified for a term expiring March 12th, 1902.

Thereupon comes defendant, by his counsel, and files demurrer thereto; which demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING and J. H. KELLY, Orators,
vs.
J. M. MCANNULTY, Respondent.

Demurrer to Complainants' First Amended Bill.

Now comes the defendant, by protestation, not confessing nor acknowledging all or any of the matters or things in the said complainants' bill to be true in such manner and form as the same are therein set forth and alleged, and doth demur thereto, and for cause of demurrer shows:

First. That the said complainants have not in and by their said bill made or stated any such cause as does or ought to entitle
24 them to any such relief as is thereby sought and prayed for from or against the defendant; and—

Second. Because complainants in and by the said bill have not stated any ground for equitable relief against this defendant nor any reason why an injunction should be granted.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WM. WARNER,
Solicitor for Respondent.

I hereby certify that the foregoing demurrer is not interposed for delay; that the same is true in point of fact, and, in my opinion, is well founded in point of law.

WM. WARNER,
Of Counsel for Respondent.

Thereupon a decree was made and entered in said cause in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WEDNESDAY, *July* 11, 1900.

AMERICAN SCHOOL OF MAGNETIC HEALING and J. H. KELLY
vs.
J. M. MCANNULTY. } 2446.

Now come the above-named complainants, by their counsel,
25 Harkless, O'Grady & Crysler, and also the defendant, by Wm. Warner, United States attorney, and the complainants ask leave to file an amended bill of complaint herein, and, the defendant's counsel consenting thereto, it is ordered by the court that leave be, and is hereby, granted to file such amended bill of complaint, which is accordingly done. Thereupon defendant files demurrer to the said amended bill, and the same is submitted to the court, and the court, being fully advised in the premises, doth sustain said demurrer, and, the complainants declining to plead further in the premises, it is ordered and adjudged by the court that said amended bill of complaint be, and the same is, deemed insufficient in law and equity, and that the said bill be, and the same is hereby, dismissed at complainants' costs, and that defendant have execution therefor if the same be not paid within twenty days hereafter.

(Signed) JNO. F. PHILIPS, *Judge.*

And afterwards, and on the 12th day of July, 1900, the following assignment of errors was filed:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri.

Circuit Court.

AMERICAN SCHOOL OF MAGNETIC HEALING and J. H. KELLY, Orators and Appellants,
vs.
J. M. MCANNULTY, Defendant and Respondent.

Assignment of Error.

Comes now the orators and appellants, American School of Magnetic Healing and J. H. Kelly, and files the following assignment of errors upon which they will rely:

26 1st. That the honorable circuit court erred in sustaining the demurrer to the complainants' amended bill for injunction and in holding the same to be insufficient in law and equity.

2nd. That the honorable circuit court erred in dismissing the complainants' amended bill and rendering judgment dismissing the same.

Dated this July 12th, 1900.

JAS. H. HARKLESS,
JOHN O'GRADY,
CHAS. S. CRYSLER,
Attorneys for Complainants and Appellants.

And afterwards, to wit, on the 14th day of July, 1900, a petition for appeal and order granting such appeal *was* filed. Said petition and order are in words and figures as follows:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING and J. H. KELLY, Orators and Appellants,
vs.
J. M. McANNULTY, Defendant and Respondent.

The above-named orators, The American School of Magnetic Healing and J. H. Kelly, conceiving themselves aggrieved by the order entered on the 11th day of July, 1900, in the above-entitled proceeding, sustaining a demurrer to the plaintiffs' bill for an injunction, and dismissing the same, *doth* hereby appeal from
27 said order to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be certified and sent to the Supreme Court of the United States.

JAMES H. HARKLESS,
JOHN O'GRADY,
CHAS. S. CRYSLER,
Attorneys for Orators and Appellants, 7th Floor, American Bank Building, Kansas City, Missouri.

And now, to wit, on this 12th day of July, 1900, it is ordered that the appeal prayed for in above-entitled cause of The American School of Magnetic Healing and J. H. Kelly *vs.* J. M. McAnnulty be, and the same is hereby, allowed to the Supreme Court of the United States, as prayed for.

JNO. F. PHILIPS, *Judge.*

The bond for appeal in said cause is in words and figures as follows, to wit:

28 UNITED STATES OF AMERICA, *sct:*

Know all men by these presents that we, American School of Magnetic Healing and J. H. Kelly and —— —— and —— ——, are held and firmly bound unto J. M. McAnnulty, his executors and administrators, in the sum of one thousand dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of July, A. D. 1900.

Upon this express condition, to wit: Whereas the above-named American School of Magnetic Healing & J. H. Kelly have prose-

cuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the cause above named by the circuit court of the United States for the western division of the western district of Missouri:

Now, if the above-named American School of Magnetic Healing and J. H. Kelly shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

AMERICAN SCHOOL OF MAGNETIC HEALING.
By J. H. KELLY, *Manager.* [SEAL.]
J. H. KELLY. [SEAL.]
H. M. DUCK. [SEAL.]
JAY RINEHART. [SEAL.]

Signed and sealed in presence of—
O. H. HOSS.
GUY F. NELSON.

The above bond is hereby approved and ordered to be filed and made a part of the record.

JNO. F. PHILIPS, *Judge.*

29 UNITED STATES OF AMERICA, *Western District of Missouri,* } ss:

J. H. Kelly, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides in Vernon county, western division of western district of Mo., and is worth over and above all his debts and liabilities the sum of twenty thousand dollars, and that he owns real estate to that amount subject to execution in the State of Missouri.

J. H. KELLY.

Subscribed and sworn to before me this 13th day of July, A. D. 1900.

[SEAL.] A. J. AYRES,
Notary Public within and for Vernon County, Mo.

My commission expires M'ch 30, 1903.

UNITED STATES OF AMERICA, *Western District of Missouri,* } ss:

H. M. Duck, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides in Vernon county, western division of western district of Mo., as stated therein, and is worth over and above all his debts and liabilities the sum of two thousand dollars, and that he owns real estate to that amount subject to execution in the State of Missouri.

H. M. DUCK.

Subscribed and sworn to before me this 13th day of July, A. D. 1900.

[SEAL.] A. J. AYRES,
Notary Public within and for Vernon County, Missouri.

My commission expires M'ch 30, 1903.

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

Jay Rinehart, obligor in the within bond, being duly sworn, upon his oath deposes and says that he resides in Vernon county, western division of western district of Missouri, as stated therein, and is worth over and above all his debts and liabilities the sum of two thousand dollars, and that he owns real estate to that amount subject to execution in the State of Missouri.

JAY RINEHART.

Subscribed and sworn to before me this 13th day of July, A. D. 1900.

[SEAL.] A. J. AYRES,
Notary Public within and for Vernon County, Missouri.

My commission expires M'ch 30, 1903.

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

——— ———, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides as stated therein, and is worth over and above all his debts and liabilities the sum of — dollars, and that he owns — to that amount subject to execution in the State of ———.

——— ———.

Subscribed and sworn to before me this — day of ———, A. D. 18—.

———, ———,
Comm'r U. S. Cir. Court, Western Dist. of Mo.

[Endorsed:] 2446. United States circuit court, western district of Missouri, western division. American School of Magnetic Healing & J. H. Kelly *vs.* J. M. McAnnulty. Bond for appeal on writ of error. Filed July 14, 1900. Adelaide Utter, clerk.

30 Said opinion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMERICAN SCHOOL OF MAGNETIC HEALING, S. A. WELTMER, and J. H. Kelly, Complainants,
vs.
J. M. McANNULTY, Defendant.

Messrs. Harkless, O'Grady and Crysler (with whom were Mr. F. N. Judson and Mr. David Overmyer), for the complainants.

Mr. William Warner, United States attorney for the western district of Missouri, and Mr. Edward A. Rozier, United States attorney for the eastern district of Missouri, for the defendant.

THAYER, *Circuit Judge:*

On May 15, 1900, the Postmaster General, in pursuance of section 2 of an act of Congress approved September 19, 1890 (26 Stats., c. 908, p. 466), and by authority of section 4 of another act approved March 2, 1895 (28 Stats., c. 191, p. 964), directed J. M. McAnnulty, the defendant above named, who is postmaster at Nevada, Missouri, to return to the senders thereof all letters, whether registered or not, which arrive at said office addressed to the above-named complainants, and to stamp thereon the word "fraudulent," or to transmit said letters to the dead-letter office at Washington, D. C., to be disposed of as other dead matter under the laws relating thereto when there was nothing on said letters to indicate who were the senders of the same. This order contained
31 a finding by the Postmaster General, in accordance with the acts of Congress above mentioned, that it had been made to appear upon evidence satisfactory to him that the American School of Magnetic Healing, S. A. Weltmer, the president thereof, and J. H. Kelly, its secretary, were engaged at Nevada, Missouri, in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises. A bill of complaint was thereupon filed by the complainants herein, they being the same persons whose mail was interrupted by the aforesaid order, the object of said bill being to obtain an injunction restraining the postmaster at Nevada from obeying said order. A rule to show cause why a temporary injunction as prayed for should not be awarded has been duly issued and served, and the question to be determined at this time is whether the complainants on the showing made are entitled to the interlocutory relief prayed for.

Counsel for the complainants concede that it has been settled by at least two decisions of the Supreme Court of the United States (*Ex parte* Jackson, 96 U. S., 727; *In re* Rapier, 143 U. S., 110) that under the power conferred by the legislative branch of the Government to establish post-offices and post-roads Congress has full control of the entire postal system of the country and may lawfully determine what shall and what shall not be carried in the

mails, and that the judicial branch of the Government has no right to override or interfere with the will of Congress on that subject. They also concede the elementary proposition that whenever for the purpose of executing the laws an executive officer is vested by Congress with discretionary powers the courts can neither interfere by mandamus nor by injunction with the
32 exercise of such powers. Gaines *vs.* Thompson, 7 Wall., 237; Statesby *vs.* United States, 146 U. S., 196; Mississippi *vs.* Johnson, 4 Wall., 475; City of New Orleans *vs.* Paine, 147 U. S., 261; Noble *vs.* Union River Logging R'y Co., 147 U. S., 165. Notwithstanding these concessions, it is claimed, however, that in the present instance the postmaster at Nevada may be lawfully enjoined from obeying the order of his superior officer, and this contention appears to be based mainly on two grounds—first, that the order under which the postmaster is acting is void because the Postmaster General exceeded his authority under the statute in directing the return of "all letters, whether registered or not, and other mail matter;" and, second, that it is void because the statute under which the Postmaster General acted attempts to devolve on that officer powers which cannot be lawfully exercised by an executive officer.

The language of the statute on which reliance is placed to sustain the first of these propositions is as follows: "The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretensions, representations, or promises, instruct postmasters at any office at which registered letters arrive directed to any such person or company or to the agent or representative of any such person or company, * * * to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word 'fraudulent' plainly written or stamped upon the
33 outside thereof." * * * By the fourth section of the act of March 2, 1895, the powers conferred upon the Postmaster General by the statute last quoted were extended to and made applicable "to all letters or other matter sent by mail."

It is manifest from an inspection of these statutes that Congress has in express terms conferred upon the Postmaster General the power to prohibit the delivery of any and all mail matter to a person whom that officer, after a due investigation, finds to be engaged in conducting through the mails either a lottery or a scheme to obtain money by false and fraudulent pretenses; and it is doubtless true that it intended to confer that power because of the difficulty which would generally be experienced in separating lawful mail matter from that which is unlawful, if the Postal Department was only authorized to withhold and return such letters as relate to the unlawful business in which a party is found to be engaged. Congress did not deem it expedient to cast on the Post-office Depart-

ment the duty of making inquiry or finding as to the character of every letter which was suspected to be non-mailable, when evidence was adduced which satisfied the Postmaster General that the party addressed was using the mails for the purpose of conducting a lottery business or to obtain money by fraudulent representations. The first ground of objection to the order, namely, that it is too comprehensive in its terms, is untenable and must be overruled.

In support of the second and most important objection to the order of the Postmaster General it is urged in substance that the right of a citizen to make use of such facilities as the Post-office Department at any time affords for the transportation of
34 mail matter is properly within the meaning of that word as used in the fifth amendment to the Federal Constitution; that the acts of Congress aforesaid under which the Postmaster General derived his authority to issue the order in controversy devolve on that officer the power to hear evidence, and to determine, in the light thereof, whether a person is engaged in a scheme to defraud; that as the result of such an adjudication a citizen may be deprived of his property by a proceeding before an executive officer which is essentially of a judicial character, and that such a power cannot be devolved upon an executive officer consistently with our theory of government. In other words, the second objection to the order of the Postmaster General necessarily involves the proposition that the statute under which he acted is in violation of the Federal Constitution and for that reason void.

The same propositions, in substance, were presented to the circuit court of appeals for the sixth circuit in Enterprise Savings Association *vs.* Zumstein, 67 Fed. Rep., 1000; *id.*, 15 C. C. A., 153, and were by that court held to be untenable. An attempt is made, however, to distinguish the case at bar from the case last cited because of the fact that in the latter case the complainants were alleged to be conducting a lottery, while in the case at hand the complainants were charged with using the mails to obtain money by false pretenses. It is said *arguendo* that although it may be that Congress can lawfully empower the Postmaster General to determine whether one is engaged in conducting a lottery, yet that the determination of the question whether one is engaged in a scheme to defraud is a different and more difficult inquiry, involving, as it does, a decision of mixed questions of law and fact, and that the power to decide questions of that nature, when a property right is involved, belongs exclusively to the judiciary and
35 cannot be delegated to an executive officer. The court is of opinion, however, that the reasons thus advanced for the purpose of avoiding the force of the decision in the sixth circuit are unsound. It is sometimes more difficult to analyze business ventures in which persons are engaged and determine whether they involve the essential features of a lottery than it is to determine with respect to other enterprises in which men may become engaged, whether they are schemes to defraud. In either case the officer exercises the same quasi-judicial functions such as have been exercised by the various executive departments since the foundation of the Govern-

ment, in that he hears proofs and decides issues of fact as well as questions of law. The power exercised and the consequences of its exercise are in each instance the same; therefore if it be true, as counsel for complainants seem to concede, that the Postmaster General may lawfully determine whether persons are conducting a lottery and deprive them of the use of the mails for that reason, it must be equally true that he may be empowered to determine whether persons are making use of the mails in furtherance of a scheme to defraud.

The questions at issue in this case were also elaborately considered by the supreme court of the District of Columbia in Dauphin *vs.* Key, Postmaster General, 11 Dist. Col. Rep., 203. The decision in that case arose under section 3929 of the Revised Statutes prior to the amendment thereof on September 19, 1890 (26 Stats., 466). Construing that section of the Revised Statutes which then as now authorized the Postmaster General to withhold and return mail matter which was addressed to persons who were found to be engaged in conducting lotteries or schemes to defraud
36 by the use of the mails, the court held, for reasons which commend themselves to this court as entirely sound, that the right which may at any time be accorded to a citizen by existing laws to use the mails for the transmission of mail matter is a mere privilege created by legislative enactment which may be modified or withdrawn by the same authority that created it, and that the privilege in question is not property in the constitutional sense of which one may not be deprived except in accordance with the judgment of some judicial tribunal or by due process of law. It was further decided in the same case that the statute was not intended to and that it did not in fact empower the Postmaster General to inflict punishment for a wrongful or criminal act. It was conceded by the court that a power to convict and punish a person for an offense could not, as a matter of course, be devolved upon an executive officer; but it was said of the legislation in question that it was not punitive in its character, but preventive, the sole object being to prevent the misuse of the mails and to arm the head of the Postal Department with power which would be adequate to accomplish that object.

It is hardly necessary to observe that if the right to use the mails as a statutory privilege and not property within the meaning of the fifth amendment to the Federal Constitution, then no fault can be found with the statute now under consideration, because it devolves on the Postmaster General the duty of ascertaining by satisfactory evidence if one is using the mails to defraud, and makes his right to use the mails dependent upon that finding. Congress has the right to exclude from the mails every species of mail matter that in its judgment ought not to be carried therein, and when it
37 determines, as it has done, that persons who are employing the mails for the purpose of conducting lotteries or schemes to defraud shall not be allowed to receive their mail, it can authorize an executive officer of the Postal Department to determine the fact on which the right to receive mail depends, by any appropriate method

of procedure, inasmuch as such determination of the fact does not, under the operation of the law, deprive the party concerned of his property or subject him to punishment for an offense within the meaning and intent of the organic law.

On the hearing of the motion for a temporary injunction much stress was laid in argument on the fact that the power conferred on the Postmaster General is of an arbitrary character, and if erroneously exercised at any time is liable to occasion great loss and inconvenience to the citizen. On this ground a strong plea was made that the court should, if possible, so construe the statute as to enable them to control the exercise of the power in question by reviewing the decision of the head of the Post-office Department in whom the power has been lodged. In answer to this suggestion, it is sufficient to say that in whosever hands power is lodged, whether in the judicial or executive branch of the Government, it is liable at times to be abused or erroneously exercised, and the fact that a particular authority may be abused is in itself no reason why a court should assume a jurisdiction to control its exercise which does not of right belong to it. Moreover, if the action of the Postmaster General was liable to be arrested on any and every occasion where a party complaining of his action sees fit to appeal to the courts it is probable that the statute would not afford an efficient means for preventing the misuse of the mails as Congress intended it to afford; but be this as it may, the court is satisfied that it cannot lawfully
38 grant a temporary injunction. The motion to that effect is accordingly denied, and the rule to show cause why a temporary injunction should not issue is discharged.

39 UNITED STATES OF AMERICA, *sct:*

I, Adelaide Utter, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the above and foregoing is a true copy of the record, assignment of errors, and all proceedings in the case as fully as the same remains on file and of record in my office.

Witness my hand as clerk and the seal of said court.

Done at office in Kansas City, Missouri, this 4th day of August, A. D. 1900.

{Seal of the United States Circuit Court, Western Division, for the Western District of Missouri.}

ADELAIDE UTTER, *Clerk.*

{Ten-cent United States internal-revenue stamp, canceled 8, 4, '00. A. U.}

Endorsed on cover: File No., 17,887. W. Missouri C. C. U. S. Term No., 146. American School of Magnetic Healing and J. H. Kelly, appellants, *vs.* J. M. McAnnulty. Filed August 23rd, 1900.